

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

ORIGINAL

RECEIVED

FEB 14 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of the Commission's Rules to)
Establish Rules and Policies Pertaining)
to the Mobile-Satellite Service and)
Radiodetermination Satellite Service)
in the 1610-1626.5 MHz and)
2483.5-2500 MHz Bands.)

CC Docket No. 92-166

To: The Commission

SPECIAL REQUEST FOR COMMISSION ACTION

TRW Inc. ("TRW"), by its attorneys, and in order to protect the integrity and objectivity of the above-captioned rulemaking proceeding, hereby requests the Commission to determine that the request of Motorola Satellite Communications, Inc. ("Motorola") for a waiver of the construction permit requirement of Section 319(d) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 319(d) (see File No. 8-DSS-MISC-94), is inappropriate for determination by the Chief of the Common Carrier Bureau (acting pursuant to delegated authority), and thus will be acted upon by the full Commission. As explained below, even if it can be assumed for sake of argument that this special action is not literally compelled by Section 0.291(d) of the Commission's own rules, 47 C.F.R. § 0.291(d) (1992), the

005

Commission must nonetheless require it in light of the fact that the outcome of the above-captioned rulemaking proceeding in CC Docket No. 92-166 would be impermissibly and irrevocably prejudiced by anything other than an outright denial of Motorola's waiver request.

Motorola and TRW are two of the six applicants that have applied to the Commission for authority to establish mobile satellite service/radiodetermination satellite service ("MSS/RDSS") systems. Last month, the Commission adopted (but has not yet even released) a notice of proposed rule making that proposes service and licensing rules for the MSS/RDSS. However, because the applicants have been unable to agree on a sharing scheme that would enable all of the proposed systems to operate in the spectrum the Commission allocated late last year for MSS/RDSS use, their applications remain mutually exclusive. In other words, it remains a very real possibility that the Commission will have to adopt licensing rules and policies for the MSS/RDSS in its above-captioned rulemaking proceeding that will require the dismissal or substantial reformulation of one or more of the applications filed by Motorola, TRW, or any of the other MSS/RDSS applicants.

In its request for a waiver of Section 319(d) of the Act, Motorola seeks authority to spend upwards of \$30 million to

commence pre-authorization construction of its proposed MSS/RDSS system. TRW has formally opposed Motorola's request for waiver on a variety of factual and policy grounds. See Opposition of TRW Inc., File No. 8-DSS-MISC-94 (filed February 14, 1994). In its Opposition, TRW demonstrates that grant of the waiver requested by Motorola will undoubtedly prejudice the outcome of the rulemaking proceeding in CC Docket No. 92-166 (which is at a particularly vulnerable stage), and it also shows that Motorola has intentionally brought upon itself the very facts and circumstances it now is attempting to use to justify the grant of the waiver. Id. at 3-6. TRW also exposes the numerous errors in Motorola's assertion that the public interest will be advanced upon the issuance of the waiver; the only interest to be advanced is Motorola's pecuniary interest. Id. at 6-16, 16-21. A copy of TRW's Opposition is attached hereto, and is hereby incorporated by reference.

Though it is completely without foundation and utterly ineligible for grant, Motorola's waiver request nevertheless has ramifications for the instant rulemaking proceeding that necessitate its consideration (and ultimate rejection) by the Commission itself. For example, grant of a waiver and the resultant expenditures could affect the conduct of the further negotiations the Commission has indicated may be initiated in

this proceeding to resolve mutual exclusivity among the applicants. Also, if Motorola is permitted to finalize its spacecraft design in order to procure long lead items, the Commission's ability to make tough policy decisions based on truly legitimate criteria are likely to be compromised; Motorola is sure to use the fact of its expenditures under the waiver and its concomitant system design inflexibility in an attempt to thwart the adoption of regulatory requirements it perceives as unfavorable. At the very least, such a stand by Motorola would delay the proceeding's resolution and distract the Commission and the participants from the core issues. At most, it could lead to an inferior technical "solution" that not only will be unlawful, it will jeopardize the viability of a competitive MSS/RDSS service.


As TRW explains in its attached Opposition, Motorola has pieced together a number of scenarios pursuant to which it has postulated that the Common Carrier Bureau may act upon the request in stages pursuant to its delegated authority under Section 0.291(d) of the Commission's Rules. Id. at Section IV. TRW has responded to these requests and shown both that Motorola's interpretation of Section 0.291(d) is incorrect, and that in any event, the matter is one that should be determined by the Commission. Id.

Accordingly, TRW requests here that the Commission take whatever steps are necessary to protect the objectivity and integrity of its crucial rulemaking proceeding in CC Docket No. 92-166. At a minimum, this means that the Commission must act itself on the disruptive waiver request now being pursued by Motorola -- and deny the same for the reasons articulated by TRW in its attached Opposition -- rather than leaving the matter for resolution pursuant to such delegated authority as exists.

Respectfully submitted,

TRW Inc.

By:


Norman P. Leventhal
Raul R. Rodriguez
Stephen D. Baruch

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 429-8970

February 14, 1994

Its Attorneys

ATTACHMENT

RECEIVED

FEB 14 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)
)
Request of Motorola Satellite) File No. 8-DSS-MISC-94
Communications, Inc. for)
Waiver of Section 319(d) to)
Commence Construction of Proposed)
MSS/RDSS System)

To: The Commission

OPPOSITION

Norman P. Leventhal
Raul R. Rodriguez
Stephen D. Baruch

Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006
(202) 429-8970

February 14, 1994

Its Attorneys

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
I. THE FACTUAL BASES STATED BY MOTOROLA ARE ENTIRELY OF ITS OWN MAKING, AND FAIL TO JUSTIFY THE GRANT OF THE REQUESTED WAIVER	3
II. GRANT OF MOTOROLA'S WAIVER REQUEST WOULD BE PREMATURE AND PREJUDICIAL TO THE PARTIES TO THE ONGOING MSS/RDSS PROCEEDINGS	6
III. MOTOROLA HAS FAILED TO DEMONSTRATE THAT THE GRANT OF ITS WAIVER REQUEST WOULD ADVANCE ANY INTEREST OTHER THAN MOTOROLA'S PRIVATE PECUNIARY INTERESTS	16
IV. THE FULL COMMISSION SHOULD RULE ON MOTOROLA'S WAIVER REQUEST.	21
V. CONCLUSION	24

SUMMARY

TRW Inc. ("TRW") hereby opposes the request of Motorola Satellite Communications, Inc. ("Motorola") for waiver of the construction permit requirement of Section 319(d) of the Communications Act, to enable it to spend more than \$30 million to begin construction of its proposed "Iridium" MSS/RDSS system. TRW urges the full Commission to rule on Motorola's request as a unitary proposal, and to deny the request as inherently prejudicial to and disruptive of the ongoing MSS/RDSS proceedings.

The bases which Motorola offers for grant of the Section 319(d) waiver are entirely self-imposed, contrived and subjective. The construction and launch schedules to which Motorola claims to be bound are of its own making, and Motorola has only itself to blame if it hired workers or entered into contracts that require it to exercise options before the Commission has granted it a license. The Commission certainly should not reward Motorola's attempt to bootstrap its expenditures under the Commission's prior grant of experimental satellite authority into its MSS/RDSS system costs with the grant of a Section 319(d) waiver.

Motorola's claim that it is willing to accept the risk that it may be denied a final construction permit is not credible. Motorola made the same claim with respect to its experimental satellite applications, and is now invoking the grant of those applications as a reason why the Commission must

grant it a Section 319(d) waiver and adhere to its self-imposed schedule for launch of the entire Iridium system.

The grant of Motorola's requested waiver would be irretrievably prejudicial to the parties to the MSS/RDSS licensing and applications proceeding. The Commission and the courts have recognized that pre-authorization construction and expenditures can sway decisionmakers, and that applicants who receive such authorizations will use them as leverage just as Motorola has sought to use its experimental satellite authorization.

Motorola fails to demonstrate the public interest in the head start it seeks, offering only generic rationales that do not counterbalance the prejudice that its requested waiver would cause. The decisions that Motorola cites in support of its waiver request are inapposite, as none of the waivers granted in those decisions were expected to result in competitive harm to other applicants or prejudice to ongoing proceedings.

Finally, TRW asks that the full Commission rule on Motorola's request at one time, rather than delegating a portion of the decision to the Common Carrier Bureau or making the decision on a piecemeal basis. Under Section 0.291(d) of the Commission's rules, the Bureau lacks the authority to authorize all or any part of Motorola's proposed expenditure. To rule on the expenditure in separate parts would obscure its enormous prejudicial impact, and would only further delay the MSS/RDSS licensing process.

The Commission should therefore rule on Motorola's request as a unitary proposal, and should deny it.

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Request of Motorola Satellite)	
Communications, Inc. for)	File No. 8-DSS-MISC-94
Waiver of Section 319(d) to)	
Commence Construction of)	
Proposed MSS/RDSS System)	

To: The Commission

OPPOSITION

TRW Inc. ("TRW"),^{1/} by its attorneys, hereby opposes the above-referenced request of Motorola Satellite Communications, Inc. ("Motorola") for waiver of the statutory construction permit requirement of Section 319(d) of the Communications Act of 1934, as amended (the "Act"), to enable it to expend more than \$30 million to commence construction of its proposed "Iridium" MSS/RDSS system.^{2/}

^{1/} TRW is an applicant for a satellite system that would operate on a global basis in the new Mobile Satellite Service/Radiodetermination Satellite Service ("MSS/RDSS"). See Application of TRW Inc. (File Nos. 20-DSS-P-91(12) and CSS-91-015). Motorola and four other companies also have MSS/RDSS applications pending before the Commission.

^{2/} See Request for Waiver of Section 319(d) of the Communications Act ("Motorola Request") at 3. In TRW's Opposition to the Motorola Request, filed on January 6, 1990, TRW asked that the Commission place Motorola's request
(continued...)

TRW calls upon the Commission to deny Motorola's request as inherently prejudicial to and disruptive of the ongoing MSS/RDSS licensing and application proceedings. In its waiver request and its letter to the Commission of January 12, 1994,^{3/} Motorola has provided nothing but self-imposed, contrived and subjective bases that cannot begin to counterbalance the anticompetitive impact of the head start it is requesting. Motorola has also failed to demonstrate that the public interest (as opposed to Motorola's private interest) would be advanced in any way by the grant of its request. Finally, TRW believes firmly that the full Commission must rule on Motorola's waiver request as a unitary proposal, despite Motorola's suggestion that the \$30 million expenditure for which it seeks authorization is segregable into \$10 million parcels that can be acted on by the Common Carrier Bureau pursuant to delegated authority. Even assuming, arguendo, the validity of Motorola's

^{2/} (...continued)

on public notice so that all interested parties would have an opportunity to comment upon it. As the Commission has now placed the Motorola Request on public notice, TRW submits the present reformulation of its Opposition for consideration in accordance with the filing deadline established in the public notice.

^{3/} Letter from Philip L. Malet, Counsel for Motorola Satellite Communications, Inc., to William F. Caton, Acting Secretary, Federal Communications Commission (Jan. 12, 1994) ("Motorola Letter").

contention, the implications and ramifications of the Motorola Request are so profound as to necessitate consideration at the Commission level.

I. THE FACTUAL BASES STATED BY MOTOROLA ARE ENTIRELY OF ITS OWN MAKING, AND FAIL TO JUSTIFY THE GRANT OF THE REQUESTED WAIVER.

Motorola bases its request for a waiver of Section 319(d) of the Act on a need "to meet its construction and launch schedules as reflected in its business plans."^{4/} It claims to have entered into contracts (for experimental satellites previously authorized by the Commission) that require it to exercise options later this year on components for its "full constellation."^{5/} It contends that failure to exercise those options will cost it money and require the layoffs of Iridium project workers.^{6/}

Under no circumstances should the Commission grant any part of Motorola's request to spend \$30.513 million during the third and fourth quarters of 1994 to commence construction of the Iridium system. The justifications pleaded by Motorola for its

^{4/} Motorola Request at 1. See Motorola Letter at 1-2.

^{5/} Motorola Request at 3-4.

^{6/} Id. at 4. See Motorola Letter at 2.

requested waiver are completely self-imposed and contrived. Even if it had satisfactorily documented its claims -- which it has not -- the fact remains that the scheduling concerns and contractual obligations articulated by Motorola are wholly of its own making. There is no statutory or regulatory requirement that forced Motorola to "plan" a launch date that requires purchase of long lead items in June 1994, and Motorola has only itself to blame for entering into a contract (if in fact it did) that forces the expensive elections it claims at a time when the text of the Commission's proposed MSS/RDSS service rules has yet even to be released.

Indeed, TRW, in its Petition to Deny Motorola's experimental application, warned that Motorola would attempt to bootstrap its experimental satellite authority into its MSS/RDSS system.^{2/} Motorola denied TRW's charges at the time, but here it is, predicting "severe consequences" if it is not able to extend agreements made for experimental spacecraft into a pre-

^{2/} See TRW Petition to Deny Applications of Motorola Satellite Communications, Inc. (File Nos. 2303-EX-PL-91, et seq.), filed March 5, 1992, at 5-10, 11-21. Although the Chief Engineer granted Motorola authority to construct five experimental satellites, TRW's September 4, 1992 Petition for Reconsideration of that grant remains pending, and could still lead to reversal of the experimental authority that Motorola seeks to perpetuate here. Copies of TRW's Petition to Deny and Petition For Reconsideration are included as Attachments A and B hereto.

licensing construction of its MSS/RDSS system. Whether Motorola's bootstrapping was planned from the outset or not, the Commission clearly should not encourage such behavior with a waiver of Section 319(d) that is prejudicial to other parties.

The Commission must disregard Motorola's contention that it is willing to accept the economic consequences of a denial of a final construction permit.^{8/} Motorola made a similar contention in connection with its experimental satellite applications,^{9/} and the current waiver request (with its predictions of dire economic consequences if options in the experimental contracts are not timely exercised) is nothing less than a direct refutation of its earlier pledge.

On the basis of the abject insufficiency of the specific "factual" justifications pleaded by Motorola in support of its waiver request^{10/} -- which, even if accurate in all respects, would be true of many Commission licensing activities

^{8/} See Motorola Request at 5-6.

^{9/} See Motorola Opposition to Petition for Reconsideration (File No. 2306-EX-PL-91), filed September 17, 1992, at 5 ("Motorola . . . remains willing to assume the risk that any funds it expends in furtherance of its testing program will not result in the approval of the IRIDIUM™ system on a regular basis").

^{10/} See Motorola Request at 4-5.

-- the Commission must deny Motorola's request or face the prospect that all future Commission applicants will follow a similar scheme of pre-authorization planning and construction. Such an outcome would completely reverse long-standing administrative procedure and be directly inimical to sound public policy.

II. GRANT OF MOTOROLA'S WAIVER REQUEST WOULD BE PREMATURE AND PREJUDICIAL TO THE PARTIES TO THE ONGOING MSS/RDSS PROCEEDINGS.

Motorola maintains that the grant of its requested \$30 million waiver would not prejudice the ongoing MSS/RDSS licensing and application proceedings because: 1) all the applicants have agreed to one of two spectrum sharing plans, and both plans would grant licenses to all qualified non-geostationary applicants; 2) any benefit that Motorola would derive from the waiver is equally available to any other applicant who submits a waiver request; and 3) if auctions are used to license the applicants' systems, Motorola's expenditure would not influence the licensing process.^{11/} In the Motorola Letter, Motorola adds that four of the five non-geostationary system proponents have already received experimental licenses that include a satellite

^{11/} Id. at 6-7.

component, and that the geostationary applicant already has one satellite under construction.^{12/}

Motorola's arguments are both misleading and ineffectual. As the Commission has yet to award conditional licenses or even to release the text of its proposed rules and policies for the MSS/RDSS service, grant of Motorola's request would cause competitive harm to the other applicants in the proceeding who do not or cannot take such pre-authorization risks. These parties are entitled to await the outcome of the rulemaking and licensing proceedings (as contemplated in the Administrative Procedure Act and the Commission's rules) before undertaking extraordinary capital expenditures, and they should in no way be penalized competitively for their justifiable expectation that the Commission would not depart from statutory policy in this critical respect. Equally important, there can be no doubt that the Commission (as a decision-making body comprised of human beings)^{13/} would be unable completely to ignore the fact of Motorola's exorbitant expenditures as it conducts its deliberations on licensing procedures and the mechanics of spectrum sharing for the MSS/RDSS service.

^{12/} Motorola Letter at 2.

^{13/} See notes 17-19, infra, and accompanying text.

Motorola initially attempts to deflect the prejudice issue as to the applicants for non-geostationary MSS/RDSS systems by noting that, between its sharing plan and a sharing plan co-filed by TRW, all current applicants could be licensed. Motorola incongruously asserts, however, that "[e]ven under the Constellation/Ellipsat/TRW plan, Motorola would receive a license, albeit not an acceptable one."^{14/} If the license Motorola would receive is not acceptable to it, Motorola cannot reasonably rely on the pendency of this "alternate" plan as a means of resolving the key outstanding licensing issue. In other words, Motorola cannot assure the Commission that no matter what happens, it would not assert that its prior expenditures entitle Motorola to a license of "acceptable" parameters. In any event, TRW has not abandoned its desire to see full-band interference sharing adopted as the preferred sharing technique for the MSS/RDSS service -- a technique wholly unacceptable to Motorola.^{15/}

^{14/} Motorola Request at 5 (footnote omitted).

^{15/} Apparently arguing in the alternative, Motorola asserts in its waiver request that "the Commission has previously granted Section 319(d) waivers in the face of pending objections and even in the face of serious public interest issues pertaining to the underlying applications." Motorola Request at 5 n.14. In support of this proposition, Motorola provides an assortment of complete and incomplete citations. Of those sources clearly identified, all are readily
(continued...)

As TRW first explained in its pleadings in the proceeding on Motorola's "experimental" satellite applications,^{16/} the danger of such prejudgment of issues is inherent in any situation where an applicant with a competing service proposal is allowed to expend large sums of money in advance of action on its application or the adoption of service or technical rules.^{17/} Both the Commission and the courts

^{15/} (...continued)

distinguishable from the present case. The letter to ORBCOMM cited by Motorola involved a proceeding in which all applicants had agreed on and filed a sharing plan with the Commission, unlike in the present MSS/RDSS licensing proceeding. See letter dated November 4, 1992, from James R. Keegan, Chief, Domestic Facilities Division, Common Carrier Bureau, to Albert Halprin, Counsel for Orbital Communications Corp. (Ref. No. 1600B3) ("Letter to ORBCOMM"), cited in Motorola Request at 9-10. See also infra Section III. In American Satellite Corp., 67 F.C.C.2d 127 (1977), the Commission found that "exceptional circumstances" supported the grant of a waiver because "vital programs involving the national defense and security are involved." Id. at 128. The Commission also found such "exceptional circumstances" in American Satellite Corp., 64 F.C.C.2d 889 (1977), in that the Defense Communications Agency had characterized the need for the facilities in question as "critical" and "urgent." Id. at 890. In Satellite Business Systems, 61 F.C.C.2d 315 (1976), the Commission noted that SBS had characterized the amount of funds involved in the construction work for which it sought a waiver as "small." The Commission explicitly recognized "the dangers which are always inherent in granting piecemeal authorizations," and vowed to avoid such occurrences with respect to SBS. Such facts contrast sharply with the \$30 million piecemeal authorization which Motorola seeks in its waiver request.

^{16/} See Attachments A and B hereto.

^{17/} See Community Broadcasting Co. v. FCC, 274 F.2d 753, 759 (D.C. Cir. 1960) ("Community Broadcasting") (decisionmakers (continued...))

recognize that decisionmakers are human beings who may be unconsciously swayed by the time, effort and/or money spent on pre-permit construction, even though they strive to remain impartial.^{18/} They also recognize that applicants themselves can be expected to use de facto incumbency, expenses incurred, and development efforts as potential leverage to obtain a permanent license.^{19/} And they are right on the mark.^{20/}

^{17/} (...continued)

may be unconsciously swayed where an applicant has already spent a substantial sum of money); Consolidated Nine, Inc. v. FCC, 403 F.2d 585, 591-92 (D.C. Cir. 1968) (in reviewing grants of interim authority to operate a radio station, new investment made during period of temporary authorization that could prejudice ultimate award of license is a factor of importance); Southern California Rapid Transit District, 67 R.R.2d 328, 330 (1990) ("experience teaches that the very act of constructing and operating even a temporary or experimental facility often creates equities in its retention").

^{18/} See Community Broadcasting, 274 F.2d at 759.

^{19/} See TeleSTAR, Inc., 61 R.R.2d 1418, 1440 (1987), aff'd 64 R.R.2d 1444 (1988) (quoting WJIV, Inc. v. FCC, 231 F.2d 725 (D.C. Cir. 1956) ("If facilities are constructed prior to authorization, the fact that facilities have been built could be used to pressure the Commission in its decision to grant permits or licenses"))).

^{20/} The courts have recognized that advance expenditures by a party to a competitive licensing proceeding are a threat to the impartiality of agencies other than the Commission, as well. See, e.g., Kodiak Airways, Inc. v. Civil Aeronautics Board, 447 F.2d 341 (D.C. Cir. 1971). In Kodiak Airways, the court reversed the CAB's grant to an airline of a temporary exemption from certification requirements. The CAB had made the grant to allow Wien Consolidated Airways to serve an intrastate route pending the completion of certification proceedings involving competing carriers. In holding that petitioner Kodiak Airways had standing, the
(continued...)

Indications that Motorola will use the expenditure for which it seeks a waiver to influence the Commission's licensing process can, as noted in Section I above, already be found in Motorola's waiver request itself. Motorola complains in its request that if it is unable to begin the construction activities for which it seeks a waiver, "it will suffer serious economic consequences both in terms of cost increases and lost revenues."^{21/} Motorola also warns that "any delay in the construction schedule for the Iridium system, no matter how brief, will have severe consequences for Motorola,"^{22/} and makes dire forecasts of the costs it would incur in paying subcontractors to remain in "stand-by" mode and in renegotiating

^{20/} (...continued)

court applied the test it had established in Community Broadcasting. The court observed that prejudice can result where a "'temporary' operator may have spent a large amount of money constructing and operating the necessary facilities, and the individuals passing on the applications for license or certification authority will undoubtedly realize that he may suffer substantial losses if he is not the successful applicant and is forced to sell 'on a distress market.'" Id. at 345 (quoting Community Broadcasting, 274 F.2d at 758). Although the court ultimately found that Wien would not have to spend substantial amounts to operate the route on a temporary basis, it reversed the CAB's decision based on other factors established in Community Broadcasting. See Kodiak Airways, 447 F.2d at 354-55.

^{21/} Motorola Request at 4.

^{22/} Id.

supplier contracts.^{23/} Motorola even threatens to pass such costs on to its subscribers, assuming that it ultimately receives a license.^{24/} Clearly, Motorola's lobbying efforts will only become more strident if it is granted permission to spend over \$30 million on its proposed satellite system before the Commission even decides whether it should be granted a license or not, and if so, on what terms.

Motorola cannot disguise the devastating impact of its proposed expenditure merely by observing that any applicant may apply for a waiver of Section 319(d) and receive the benefits that Motorola seeks. Indeed, the claim belittles the sound public interest behind the general policy prohibiting pre-licensing construction, and stands on its head the intent behind the Congressional directives in Section 319(d) of the Act. The grant of Motorola's request would inevitably prejudice the ongoing MSS/RDSS rulemaking and application proceedings, and would therefore be improper. Any other applicant submitting a similar waiver request that contravened the fundamental objectives of the statute would, of necessity, set the stage for the creation of identical improprieties. As no other applicant

^{23/} Id. at 4-5.

^{24/} Id. at 5.

is entitled to receive the benefits that Motorola improperly seeks -- at least at this stage of the licensing process -- Motorola cannot claim that it is being treated unfairly in being denied those same benefits.

Motorola's assertion regarding auctions is speculative, and substantively flawed. To date, the Commission has not decided whether auctions will be used to license applicants in the MSS/RDSS service. As noted earlier, the Commission has not even released its NPRM regarding licensing procedures for that service. In any event, although a current expenditure by Motorola may not influence a future auction of licenses, depending upon the licensing scheme ultimately adopted, the fact remains that the "leverage" flagged as improper by the Commission and the courts could still infect Commission decisions on Motorola's basic qualifications even to participate in an auction.

Finally, Motorola's effort to justify the grant of its waiver request by making reference to the Commission's prior grant of experimental licenses to other system applicants^{25/} is a devious attempt to distort the intent behind those experimental authorizations. Motorola insinuates that the experimental

^{25/} See Motorola Letter at 2.

licenses that other applicants have received imply some sort of entitlement to construction permits in the future, and that the other applicants therefore will not be harmed if the Commission allows Motorola to spend vast sums to commence construction of its proposed Iridium system. Motorola stresses the fact that several of the experimental authorizations granted by the Commission involved a satellite component, as if to suggest that such a component somehow made the authorizations less experimental.^{26/}

As Motorola well knows, the Commission's rules on the scope of experimental authorizations do not permit construction of a proposed system in advance of the award of a license, and do not in any way imply that such authorizations will ultimately result in the award of a license.^{27/} The very definition of an experimental radio service limits such a service to experimentation and research projects.^{28/} As an experimental

^{26/} Id.

^{27/} See 47 C.F.R. § 5.202.

^{28/} See 47 C.F.R § 5.3(c). That subsection states:

(c) Experimental Radio Service. A service in which Radio waves are employed for purposes of experimentation in the radio art or for purposes of providing essential communications for research projects which could not be conducted without the benefit of such communications.

(continued...)